



United States Office
Of Government Ethics

Ethics Program Review

Saint Lawrence Seaway Development Corporation

July 2010 Report

Introduction

OBJECTIVE, SCOPE, AND METHODOLOGY

As part of the Office of Government Ethics' (OGE) monitoring activities, OGE conducted a focused review of the financial disclosure program administered at the Saint Lawrence Seaway Development Corporation (SLSDC), United States Department of Transportation (DOT). This review was conducted pursuant to section 402 of the Ethics in Government Act of 1978, as amended (Ethics Act). OGE's primary objective was to determine the financial disclosure program's compliance with applicable ethics laws and regulations. OGE also evaluated processes and procedures to assess the strengths and weaknesses of SLSDC's financial disclosure system and its impact on the agency's ability to prevent and detect ethics violations through the use of financial disclosure reports.

To meet this objective, OGE's review was limited to the examination of the public and confidential financial disclosure reports that were required to be filed at SLSDC in 2009, covering calendar year 2008. Therefore, based on OGE's observation of SLSDC's master list of financial disclosure filers, OGE examined all 16 financial disclosure reports that were required to be filed by regular SLSDC employees.¹ These 16 reports included one incumbent public report and 15 confidential reports (13 OGE Form 450 reports and 2 new entrant reports). OGE also examined the three confidential reports filed by members serving on SLSDC's Advisory Board of the Saint Lawrence Seaway Development Corporation (Board) who are designated as special Government employees (SGEs). OGE examined the reports to evaluate timeliness of filing, review, and certification. OGE's on-site fieldwork for this review was conducted in July 2009.

¹OGE did not examine the public reports filed by the SLSDC Administrator, a Presidentially appointed and Senate confirmed appointee, or the Deputy Administrator as these reports are reviewed and certified by DOT's Designated Agency Ethics Official (DAEO).

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RESULTS IN BRIEF

Overall, OGE found SLSDC's public and confidential financial disclosure systems to generally accord with the Ethics Act and 5 CFR part 2634. However, OGE found technical errors related to the certification of an incomplete public report, the over-reporting of information, and the omission of the agency's date of receipt stamp on some financial disclosure reports examined. OGE also found an improper reporting issue with regard to the confidential reports filed by SGEs. In addition, SLSDC did not have written procedures covering either the public or the confidential financial disclosure systems.

OGE is making no formal recommendation for improvement since these issues were either corrected during the review or we were assured they will be corrected during future filing cycles. However, to enhance the agency's financial disclosure program OGE strongly suggests that SLSDC develop a continuous learning strategy to enhance reviewer experience and expertise.

BACKGROUND AND ETHICS PROGRAM STRUCTURE

As the smallest operating administration within DOT, SLSDC serves the United States intermodal and international transportation system by improving the operation and maintenance of a safe, reliable, efficient, and environmentally responsible deep-draft waterway, in cooperation with its Canadian counterpart, The St. Lawrence Seaway Management Corporation of Canada. Under the direction of the SLSDC Administrator, SLSDC has approximately 157 employees located throughout its policy headquarters in Washington, DC and its operational facilities in Massena, New York. In addition, SLSDC has a statutorily mandated five-member Advisory Board that reviews the general policies of the SLSDC and advises the Administrator with respect to these policies. The members of this Advisory Board are appointed by the President with the advice and consent of the Senate.

The ethics program at SLSDC is bifurcated between its policy headquarters in Washington, DC and its operational facilities in Massena, NY, where the majority of SLSDC employees are located. The Deputy Administrator, who is located at SLSDC headquarters, serves as the administration's Deputy Ethics Official (DEO) and has oversight responsibility for the overall ethics program. While the DEO is responsible for administering the day-to-day functions of the ethics program at the headquarters office, the Chief Counsel located in Massena is responsible for carrying out the day-to-day functions of the program at the operational facilities. Both the DEO and the Chief Counsel provide ethics counseling and training to various SLSDC employees; however, the Chief Counsel serves as the administration's primary ethics official for managing SLSDC's financial disclosure program. OGE notes that ethics is a collateral duty for both the DEO and the Chief Counsel.

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PRINCIPAL FINDINGS

Ensure That Incomplete Reports Are Not Certified

It is essential that reviewers conduct as thorough a review as possible on each report. A reviewing official's certification on a report indicates that the filer's agency has reviewed the report and that the reviewing official has concluded that each required item has been completed and that on the basis of information contained in the report, the filer is in compliance with applicable laws and regulations. During the examination of the one public report filed at SLSDC, OGE noticed that the report had been certified even though none of the assets listed on the report reflected a value for the asset or an income amount derived from them. In light of this missing information, OGE advised the Chief Counsel to go back to the filer to obtain the required information. OGE confirmed prior to the conclusion of its review that this had been done.

Reviewers must seek additional information when a report is incomplete (e.g. when a filer fails to check an asset value); when a report reveals one entry (or the absence of one) that is inconsistent with another entry on the report or on the filer's previous report; when a report omits an entry for which the reviewing official has independent knowledge; or when a reviewing official requires more information to ensure the filer's compliance with Federal ethics laws and regulations or with other laws and regulations. Any lack of completeness or accuracy detected on a report should be resolved prior to a report being certified by the reviewing official. OGE suggests that the Chief Counsel become familiar with the review standards to ensure that future incomplete reports are not certified. As a good management practice, the Chief Counsel may also want to meet with this filer to ensure that the filer understands the filing instructions on how to properly complete a public financial disclosure report.

Ensure That Filers Are Aware Of Certain Reporting Errors And Omissions

The basic rule when reviewing financial disclosure reports is that an entry should disclose all required information and be sufficiently detailed to allow a full conflict of interest analysis. Anything more than that basic requirement is unnecessary; anything less is inadequate. OGE examined several confidential reports that disclosed more information than is required to be reported (i.e., mortgages on primary residences). To help reduce this type of reporting error, filers should be reminded not to disclose anything more than what is legally required to be reported on a financial disclosure report. OGE suggests the Chief Counsel develop a checklist that addresses what should and should not be reported. This checklist can then be provided along with the notification letter to filers as a supplement to the financial disclosure instructions. In addition, filers who have over-reported should be contacted during the review and certification process and asked if the reviewer can redact the extraneous information.

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Ensure That The Agency Date Of Receipt Stamp Is Consistently Provided On All Reports

Dates of receipt must be entered on the report to help assess compliance with the filing due date and the 60-day review requirement. *See* 5 CFR § 2634.605(a). While the vast majority of reports of financial disclosure reports OGE examined did indicate dates of receipt, 3 of the 16 financial disclosure reports examined did not. Of these three reports, one was the public report and the other two were confidential reports. OGE based filing timeliness for these three reports on the filers' signature dates. Using this method all three reports appeared to have been filed timely. While OGE is not considering the lack of the date stamp on these few reports to be an egregious matter, OGE reminds the Chief Counsel that a financial disclosure report is considered filed when the agency receives it. Thus, all reports must be provided with an agency date of receipt stamp to ensure compliance with the 60-day review requirements. The Chief Counsel assured OGE that this would become a routine practice during future filing cycles.

Ensure That SGE's Indicate Their Reporting Status As "New Entrant" And Receive Ethics Training Each Year

At the time of fieldwork, three of the five current Board members who were active members were required to file a confidential financial disclosure report in 2009.² OGE confirmed that all three reports were timely filed, reviewed, and certified by the Chief Counsel. OGE notes that timeliness of filing was based on the annual filing timeframe established by 5 CFR 2634.903 for confidential filing. During the examination of the reports, OGE found that the three Board members did not indicate their reporting status on the first page of the confidential report as "New Entrant" in accordance with 5 CFR § 2634.903(b). Beyond being important for technical compliance, filing a new entrant report changes the information that has to be reported. Specifically a new entrant filer, unlike an annual filer, does not have to report gifts and travel reimbursements. The Chief Counsel provided assurances that during future filing cycles the SGE reports will be categorized correctly. OGE also suggests that the Chief Counsel remind the Board members that as new entrant filers, gifts and travel reimbursements do not need to be reported and that they should not disclose anything more on their financial disclosure reports than what is legally required to be reported.

While outside the scope of the review, the Chief Counsel acknowledged that Board members were not consistently receiving ethics training materials. As a result, OGE recommended that the Chief Counsel ensure that all SGE advisory committee members receive initial ethics orientation in accordance with 5 CFR § 2638.703, on the most significant conflict-of-interest laws and ethics regulations that apply to them when they first come on board, as well as written annual ethics training thereafter, in accordance with the exception at

² According to the Chief Counsel, a fourth Board member died prior to filing his confidential report and communication with the fifth member has been non-existent for the past 10 years. OGE was advised that the fifth board member's "inactive" status has been brought to the attention of the relevant offices.

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5 CFR § 2638.705(d)(2). Prior to the conclusion of the review, the Chief Counsel confirmed for OGE that written training materials were provided to Board members during their July 2009 board meeting. The DEO was in attendance for the training and highlighted various conflicts-of-interest laws and regulations with each Board member.

Ensure that Written Procedures for Administering SLSDC's Financial Disclosure Systems Remain Updated

The Ethics Act requires the DAEO to develop DOT-wide written procedures that provide the overall framework for administering both the public and confidential financial disclosure systems. While written procedures have been developed, OGE found that they did not cover the operations of the DOT component systems. Therefore, each operating administration within DOT is required to document how they collect, review, certify, and maintain financial disclosure reports. Prior to our review, SLSDC had no written procedures for administering its public and confidential financial disclosure systems. As a result, OGE provided the Chief Counsel with sample procedures. Prior to the conclusion of the review, procedures were drafted to fully reflect compliance with the Ethics Act. OGE advised the Chief Counsel that should significant changes to SLSDC's financial disclosure system occur in the future, these procedures should be updated to reflect those changes.

In view of the importance of having a succession plan to help maintain the consistent administration of an ethics program, OGE also encourages ethics officials to develop written procedures that reflect the current practices for administering other elements of SLSDC's ethics program as well. OGE considers an agency's use of individualized written procedures to be a model agency practice and a valuable resource to both employees and ethics officials. OGE was informed that such procedures will be developed.

SUGGESTION FOR PROGRAM ENHANCEMENT

Based on the corrections made during the review and assurances received that corrections will be made during future filing cycles, OGE is making no formal recommendation for improvement. However, to enhance SLSDC's financial disclosure program, OGE suggests that a continuous learning strategy be developed to enhance reviewer experience and expertise. Consistent, timely, and accurate review of reports requires agencies to enhance reviewer experience and expertise by providing specialized training to reviewers. OGE offers financial disclosure review training courses and other training throughout the year. OGE suggests that in addition to attending formal training that the ethics officials make frequent use of the financial disclosure review guides that are on the OGE website.